Supreme Court, U.S.
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No. 92-519

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

T. K. WETHERELL, *et al.*,
Appellants,
v.
MIGUEL DE GRANDY, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of Florida

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

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BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

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1. The United States has conceded that the district court's remedial order must be vacated. *See* U.S. Mot. at 20.[1] The United States has not expressly conceded error on liability, but has made a series of predicate concessions that, taken together, require summary reversal.

The United States concedes that "persistent proportional representation is generally a defense to a Section 2

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[1] The De Grandy Appellees seek to justify the district court's remedial order as a necessary reaction to then-imminent 1992 elections. As the United States points out, however, that rationale will not support imposing the remedial plan for all future elections. *See* U.S. Mot. at 20.

claim." U.S. Mot. at 11. *See Thornburg v. Gingles*, 478 U.S. 30, 77 (1986); *id.* at 102. *See also Baird v. City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992). The United States has also conceded that the instant claims must be assessed by examining the challenged plan's impact on "eligible voters"—*i.e.*, citizens.[2] The United States concedes that, *on a statewide basis*, Hispanic citizens are proportionally represented in the Florida House of Representatives.[3] In effect, therefore, the United States concedes that SJR 2-G complies on a statewide basis with all substantive requirements of Section 2.

The United States asks, nonetheless, that the district court finding of liability be affirmed, while suggesting that Appellants can move to modify the judgment upon remand for a new remedial proceeding. *See* U.S. Mot. at 14-15 & n.6. The only material reason the United States can offer for affirming a concededly erroneous judgment in this case of great public importance is the suggestion that Appellants failed at trial to introduce Census data showing statewide citizenship levels.

Appellees can hardly fault Appellants for failing to introduce Census data that they themselves have noted "was simply unavailable" at the time of trial. *See* U.S. Stay Opp. at 11. Moreover, this Court may take judicial notice of the recently available Census data cited by the United States, which confirms that Hispanics are proportionally represented in the Florida House of Representatives on a statewide basis. *See* note 3, *supra*. Census data is routinely judicially noticed, even on appeal.[4]

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[2] *See* Mem. For The United States In Opp. To App. For Stay, at 11, *Wetherell v. De Grandy*, No. A-32 (U.S. July 14, 1992) ("U.S. Stay Opp.").

[3] *See* U.S. Mot. at 14, n.5.

[4] Federal Rule of Evidence 201 authorizes judicial notice of a fact "at any stage of the proceeding," Fed. R. Ev. 201(f), including on appeal, 21 C. Wright & K. Graham, *Federal Practice and Procedure* § 5110, at 524-25 (1977), and at 279, n.15 (1992 Supp.) (collecting cases). Courts routinely take judicial notice of Census data. *See, e.g., Barber v. Pointe*, 772 F.2d 982, 998 (1st Cir. 1985), *cert. denied*, 475 U.S. 1050 (1986); *Wyche v. Madison Parish Police Jury*, 635 F.2d 1151, 1157 (5th Cir. 1981) (redistricting case); *Neal v. Coleburn*, 689 F. Supp. 1426, 1428 (E.D. Va. 1988) (same).

Because there is no dispute that statewide proportionality satisfies Section 2 as a matter of law and no dispute that statewide proportionality exists as a matter of fact for Hispanic citizens, summary reversal is entirely appropriate at this juncture.[5]

2a. Summary reversal is required even absent these concessions because Appellants need not have proved *statewide* proportional representation to defeat the case Appellees made at trial. Appellees simply mischaracterize the proceedings below when they argue that "the premise" of their case "was that to remedy dilution throughout the State, the State was required to draw minority districts where it could"—*i.e.*, Dade County. U.S. Mot. at 12.

The United States' complaint alleged vote dilution in "*several areas of the State*," not "throughout" the State. Dade County was the only "area" where Hispanic vote dilution was alleged to have occurred. Appendix to U.S. Mot. at 3a (emphasis added). At trial, Appellees expressly limited their Hispanic vote dilution claims to Dade County, and presented no evidence of alleged Hispanic vote dilution outside Dade County. *See* Tr. I, 52; Brief in Opp. Appendix ("Opp. App.") 1a. Indeed, they voluntarily dismissed all claims of Hispanic vote dilution out-

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[5] There is no merit to the De Grandy Appellees' argument that proportionality must be measured on the basis of "total population," rather than citizens. *See* De Grandy Mot. at 14-15. The Voting Rights Act protects the rights of "citizens," and is intended to ensure that minority voters do not have less opportunity than other "members of the electorate" to "elect representatives" of their choice. 42 U.S.C. § 1973. The United States has not advanced the argument that total population is the relevant group for this analysis.

side Dade County—a step utterly inconsistent with any effort to prove statewide vote dilution. Tr. III, 5, 214. The district court squarely ruled that to "conform[] the pleadings to the evidence . . . on the House side[] the only attack is to Escambia County and Dade County. . . . All of those other counties are out of the case." Tr. III, 215.[6]

Moreover, Appellees did not demonstrate that Hispanics outside Dade County are politically cohesive with Hispanics within Dade County—an indispensable element of any purported statewide case, *see Gingles*, 478 U.S. at 50-51. Appellees' expert conceded he did not know whether such political cohesion existed, *see* Tr. III, 292; Opp. App. 1a, and the District Court found cohesion only for Dade County Hispanics. App. 44a-47a. Thus, there is no evidence that creating additional Dade County Hispanic districts would result in meaningful representation of Hispanic voters living in other parts of the State.

In sum, Appellants' defense squarely met the vote dilution claim Appellees presented at trial. This Court limits its review to the districts actually challenged, *Brown v. Thompson*, 462 U.S. 835, 846 (1983), and must therefore reverse the finding of liability based on Appellants' undisputed showing of proportional representation in the Dade County area. For similar reasons, there is no merit to the United States' argument that "Appellants' theory is fraught with legal and practical difficulties" because it permits defendants unilaterally to define the area of a State in which proportionality exists. U.S. Mot. at 13. Appellants did not unilaterally define a subset of the State and then claim proportionately within that subset—they

[6] Claims of vote dilution in Escambia County involved African-Americans and are no longer a part of this case.

demonstrated persistent proportional representation in the areas defined by the plaintiffs' cases-in-chief.[7]

b. The argument that proportional representation is a valid defense only when shown on a statewide basis is, in any event, wrong as a matter of law. The text of Section 2, which protects the right to "*elect* representatives of choice," forecloses any such argument. *Thornburg v. Gingles* also forecloses the argument. The Court in *Gingles* determined that persistent proportional representation in one of the districts challenged in that case constituted a complete defense to the vote dilution claim with respect to that district. 478 U.S. at 77; *id.* at 103. Had statewide proportionality been required, the achievement of proportional representation *only* in this single district would not have justified reversal of the district court's liability finding. *See also id.* at 61, n.28 ("The inquiry into the existence of vote dilution . . . is district specific.").

Moreover, if the judgment below stands for the principle that proportionality must be shown on a statewide basis, summary affirmance would leave undisturbed a square conflict on an issue of obvious importance. In *Nash v. Blunt*, 797 F. Supp. 1488 (W.D. Mo. 1992), a three-judge district court considering Section 2 challenges to Missouri's legislative reapportionment squarely rejected the argument Appellees advance here. *Id.* at 1499 ("there is no authority to suggest that these citizens' inability to be

[7] Appellees make much of the fact that Appellants presented alternative proportionality defenses for both Dade County proper (which comprises a population entitled to approximately 18 House Districts) and a somewhat broader 20-district "Dade County area." Appellants were, however, forced to present alternative defenses because the De Grandy plaintiffs and the United States advanced different definitions of the relevant geographic frame of reference. De Grandy alleged vote dilution in Dade County proper, while the United States alleged vote dilution in the 20-district "Dade County area." Regardless, Appellants demonstrated that Hispanics are proportionally represented under either alternative, *see* J.S. at 4 and n.11, a point Appellees do not contest.

included together in one or more districts should be 'made up' by increasing the number of minority controlled districts in those areas of the state where black citizens are most concentrated").

c. At bottom, Appellees cannot justify the judgment below as a "straightforward application" of *Gingles*. *See* U.S. Mot. at 8. The dispositive issue is not whether additional Hispanic House districts could have been drawn in Dade County, but whether the Voting Rights Act required the State of Florida to create those additional districts. *Gingles* cannot answer that question. The identification of additional districts that could be drawn is merely a threshold plaintiffs must pass before reaching the dispositive issue whether, based on the size of the protected minority class, those districts are required to be drawn.

The district court's failure to grasp this critical point led it to convert *Gingles* into a maximization requirement as applied to single-member districts.[8] That is why the court, having concluded under *Gingles* that two additional Dade County Hispanic districts could be drawn, completely ignored Appellants' proportionality arguments. The district court did not even *consider* "the extent to which minority candidates have succeeded," which the Senate Report to Section 2 specifically identifies as a critical factor in the required "totality of the circumstances" analysis. *Gingles*, 478 U.S. at 75; S. Rep. No. 417, 97th Cong. 2d Sess. 29 (1982), *reprinted in* 1982 U.S. Code & Admin. News 177, 206-07.

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[8] This result is especially disturbing because it exposes single-member district plans to a greater degree of scrutiny than multi-member district plans when it is multimember districts that present the inherent risk of submerging the voting strength of a minority that could elect representatives of its choice in single-member districts. *See Gingles*, 478 U.S. at 47 & n.13 (O'Connor, J.); *Rogers v. Lodge*, 458 U.S. 613, 616 (1982).

d. Lacking any substantive argument for affirmance, the De Grandy Appellees have resorted to the frivolous claim that proportionality "was not presented as a substantive defense" in the district court. De Grandy Mot. at 20; *id.* at 12. On a motion for directed verdict, counsel for the Senate specifically argued that proportional representation defeats a vote dilution claim. *See* Opp. App. 1a. Counsel for the House expressly "adopted the position of the Senate" and argued that SJR 2-G "in fact provides more than proportionality." Tr. III, 193. Counsel for the House raised the proportionality defense again in closing argument. Tr. VIII, 78-79.[9]

3. Appellees also miss the point of Appellants' challenge to their failure to take citizenship levels into account. Appellees focus on whether the district court's conclusion that 11 effective Hispanic House districts *could* be drawn in Dade County was clearly erroneous because it failed to account for citizenship levels. *See* U.S. Mot. at 15; De Grandy Mot. at 17. That ruling was clearly erroneous —given the indisputably high percentages of Hispanic noncitizens in Dade County[10]—but the critical issue in

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[9] There is no merit to Appellees' unsupported argument that the proportionality defense was waived because it was not expressly pleaded as an affirmative defense pursuant to Fed. R. Civ. P. 8. Proportionality is not in the nature of confession and avoidance; it constitutes a direct refutation of Appellees' central claim that Hispanics have less opportunity to elect representatives of choice than do other members of the Dade County electorate. Thus, the defense was pled by specific denial of Appellees' claim of vote dilution. In any event, "if evidence relating to an unpleaded [affirmative] defense is introduced without objection, [Fed.] Rule [Civ. Pro.] 15(b) requires the pleadings to be treated as if they actually had raised the issue." 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1278, at p. 495, 498 (1990). Appellees raised no objection to the substantial evidence of proportional representation introduced by Appellants at trial. *See* J.S. at 4-5, nn.10-12.

[10] As demonstrated, Appellants introduced unrebutted evidence estimating that 55% of Dade County's voting age Hispanics were

this case is not whether 11 effective Hispanic House districts *could* have been created in Dade County. Rather, this case turns on whether Section 2 *required* that 11 such districts be drawn.

To resolve that issue, citizenship levels must be considered. On its face, the Voting Rights Act protects only "a denial or abridgement of the [voting] right of any *citizen* of the United States." 42 U.S.C. § 1973(a) (emphasis added). As the Court made clear in *Gingles*, "[t]he essence of a Section 2 claim is that a challenged electoral law . . . cause[s] an inequality in the opportunities enjoyed by black [or other minority] and white *voters* to elect their preferred representatives." 478 U.S. at 47 (emphasis added).

Because it is undisputed that Hispanics constitute less than 40% of the citizen population of Dade County, and SJR 2-G affords those Hispanic citizens the opportunity to elect their candidates of choice in 50% of the Dade County districts, Hispanic citizens have the ability to elect substantially more than their fair share of preferred representatives. This substantial relative overrepresentation precludes any finding that SJR 2-G affords Hispanics "less opportunity . . . to elect representatives of their choice" than that available to "other members of the electorate" in Dade County. 42 U.S.C. § 1973(b).

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not citizens. *See* Testimony of W. De Grove, App. 187a-198a. Although Appellees now attack these results and the methodology that produced them, that methodology—bivariate ecological regression analysis—was relied upon by the Court in *Thornburg v. Gingles*, 478 U.S. at 53 n.20, 52-74, and by numerous lower courts. *See, e.g., Overton v. City of Austin*, 871 F.2d 529, 539 (1989); *Solomon v. Liberty County, Florida*, 899 F.2d 1012, 1019-20 (11th Cir. 1990), *cert. denied*, 111 S. Ct. 670 (1991). Additionally, official Census data that is now available supports this expert testimony. *See* R. Kominski, U.S. Bureau of the Census, Letter to J. Guthrie and attachments (Nov. 19, 1992), Opp. App. 5a.

4. Abstention and *res judicata* principles provide an independent basis for reversal.[11] The De Grandy Appellees indisputably raised their Section 2 claims first in the Florida Supreme Court proceedings. Although the Florida Supreme Court's rejection of those claims was not premised on a complete factual analysis, the court offered an immediate evidentiary hearing. The De Grandy Appellees thus had a full and fair opportunity to raise all factual issues in the Florida Supreme Court. *See, e.g., Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 480-82 & n.22 (1982). The De Grandy Appellees chose not to avail themselves of that opportunity, and must live with the *res judicata* consequences of that choice.

For similar reasons, the United States' claims should not be adjudicated by the federal court. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). The United States' claims required reconsideration of issues previously decided by the Florida Supreme Court, and resulted in the issuance of an injunction prohibiting the implementation of SJR 2-G. The federal court's subsequent order was thus more than merely an inconsistent judgment; it countermanded the prior Florida Supreme Court order to implement SJR 2-G. "[T]o reverse or modify [a] judgment [of the state supreme court] . . . [is] an exercise of appellate jurisdiction," *Rooker*, 263 U.S. at 416—which is exactly what this Court's decisions in *Rooker* and *Feldman* prohibit. The United States should have brought its claims in the state supreme court proceedings, or subsequently petitioned that court for a modification of its order. *See, e.g., Lapin v. Shulton, Inc.*, 333 F.2d 169, 172 (9th Cir.), *cert. denied*, 379 U.S. 904 (1964).

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[11] Resolution of this issue is required only if the Court decides either to affirm the liability determination or remand, because it would then dictate the entitlement of the De Grandy Appellees both to attorneys fees and to continued participation in any potential future proceedings.

CONCLUSION

The July 2, 1992 judgment of the district court should be summarily reversed. In the alternative, the Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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APPENDIX A

Statement of counsel for the United States:

> "Our presentation will be limited to . . . Dade County and Escambia County . . . and perhaps a couple of pockets elsewhere, but in a very minor nature."

Tr. I, 52.

* * * *

Testimony of Appellees' expert, Dario Moreno, at trial:

> Q: Have you looked into or do you know whether the Hispanics outside of Dade County are politically cohesive with Hispanics inside Dade County?
> A: No, I did not.

Tr. III, 292.

* * * *

Argument of Senate Appellants' counsel at trial:

> It is almost a litmus test from which we don't need to proceed any further by showing . . . proportional representation. It is the district 23 argument made in *Gingles*, that you cannot show discriminatory effect when all the evidence shows that you have at least a [pro]portion and probably much greater representation.

Tr. III, 189. *See also* Tr. III, 192 (Senate arguments adopted by Executive Appellants).

APPENDIX B

[SEAL]

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
Washington, D.C. 20233-0001

November 19, 1992

Mr. John Guthrie
Florida Senate
726 Capitol
Tallahassee, Florida 32399-1100

Dear Mr. Guthrie:

This letter is in response to our telephone conversation of November 18, 1992. You requested all available materials concerning the bilingual ballot provisions of Voting Rights Act coverage for Dade County, Florida. A copy of the tabulations for Dade County, and a memorandum describing the full package of tabulations from which they have been taken, is enclosed. As I noted to you in our conversation, a full tabulation of citizenship by race/ethnic statuses does not exist. The tabulations you have here are all that exist on this topic, to my knowledge, for Dade County.

Based on the photocopy charges, the cost of the material you requested is $10.00. Please make your check or money order payable to Commerce-Census and send it, along with a copy of this letter, to the Statistical Information Staff, Population Division, Bureau of the Census, Washington, D.C. 20233.

If I can be of further help, please contact me on (301)-763-1154.

Sincerely,

/s/ Robert Kominski
ROBERT KOMINSKI
Chief, Education and
Social Stratification Branch
Population Division

County Level Florida			Voting Pop. -T-	English Not Only Language -U-	English Less Than Very Well -V-	English Less Than Well -W-	English Not Spoken -X-
A—Florida	12	#Tot.	987346	410532	174722	79437	17382
B—Dade County	025	%	100.0	41.5	17.6	8.0	1.7
		#Ilt.	27868	16707	13619	9822	3775
		%	2.9	4.1	7.8	12.4	21.8
D—American Indian	1	#Tot.	1517	360	169	88	13
E— Total		%	.1	.0	.0	.0	.0
F— Total		#Ilt.	55	44	39	29	3
G— Flags	00001-00001	%	3.7	12.3	23.1	33.0	23.1
2240							
D—American Indian	1	#Tot.	112	112	69	25	3
E— Total		%	.0	.0	.0	.0	.0
F—Mikasuki	917	#Ilt.	37	37	32	22	3
G— Flags	00001-00001	%	33.1	33.1	46.4	88.0	100.0
2240							
D—American Indian	1	#Tot.	109	88	54	20	3
E—Miccosukee	437	%	.0	.0	.0	.0	.0
F— Total		#Ilt.	32	30	25	17	3
G— Flags	00001-00001	%	29.4	34.1	46.3	85.0	100.0
2240							
D—American Indian	1	#Tot.	88	88	54	20	3
E—Miccosukee	437	%	.0	.0	.0	.0	.0
F—Mikasuki	917	#Ilt.	30	30	25	17	3
G— Flags	00001-00001	%	34.1	34.1	46.3	85.0	100.0
2240							

4a

D—American Indian	1	#Tot.	57	28	18	5	0
E—Seminole	438	%	.0	.0	.0	.0	.0
F— Total		#Ilt.	7	7	7	5	0
G— Flags	00001-00001	%	12.3	25.0	38.9	100.0	.0
2240							
D—American Indian	1	#Tot.	20	20	13	3	0
E—Seminole	438	%	.0	.0	.0	.0	.0
F—Mikasuki	917	#Ilt.	5	5	5	3	0
G— Flags	00001-00001	%	25.0	25.0	38.5	100.0	.0
2240							
D—Asian American	3	#Tot.	7972	5092	1950	516	32
E— Total		%	.8	.5	.1	.0	.0
F— Total		#Ilt.	213	161	134	91	6
G— Flag	00100-00000	%	2.7	3.2	6.9	17.7	18.8
D—Asian American	3	#Tot.	1489	1489	981	392	24
E— Total		%	.1	.1	.0	.0	.0
F—Chinese	708	#Ilt.	145	145	118	91	6
		%	9.8	9.8	12.1	23.3	25.0
D—Hispanic	4	#Tot.	350499	332451	153529	73631	16946
E— Total		%	35.4	33.6	15.5	7.4	1.7
F— Total		#Ilt.	14655	13833	11799	9161	3739
G— Flags	11110-01110	%	4.2	4.2	7.7	12.5	22.1
D—Hispanic	4	#Tot.	330493	330493	152886	73403	16933
E— Total		%	33.4	33.4	15.4	7.4	1.7
F—Spanish	625	#Ilt.	13745	13745	11744	9132	3733
G— Flags	11110-01110	%	4.2	4.2	7.7	12.5	22.1

5a

County Level Florida			Voting Pop. -T-	English Not Only Language -U-	English Less Than Very Well -V-	English Less Than Well -W-	English Not Spoken -X-
D—Hispanic	4	#Tot.	12744	12136	5832	2037	470
E—Colombian	234	%	1.2	1.2	.5	.2	.0
F— Total		#Ilt.	320	314	254	129	85
G— Flags	00110-00000	%	2.6	2.6	4.4	6.4	18.1
D—Hispanic	4	#Tot.	12050	12050	5832	2037	470
E—Colombian	234	%	1.2	1.2	.5	.2	.0
F—Spanish	625	#Ilt.	314	314	254	129	85
G— Flags	00110-00000	%	2.6	2.6	4.4	6.4	18.1
D—Hispanic	4	#Tot.	46467	42376	16482	7160	1748
E—Puerto Rican	261	%	4.7	4.2	1.6	.7	.1
F—Total		#Ilt.	2891	2646	2171	1629	670
G— Flags	00110-00110	%	6.3	6.3	13.2	22.8	38.4
D—Hispanic	4	#Tot.	42284	42284	16476	7154	1742
E—Puerto Rican	261	%	4.2	4.2	1.6	.7	.1
F—Spanish	625	#Ilt.	2620	2620	2165	1623	664
G— Flags	00110-00110	%	6.2	6.2	13.2	22.7	38.2
D—Hispanic	4	#Tot.	240858	232685	111820	55435	12463
E—Cuban	271	%	24.3	23.5	11.3	5.6	1.2
F— Total		#Ilt.	8939	8500	7488	5943	2343
G— Flags	01110-01110	%	3.8	3.7	6.7	10.8	18.9
D—Hispanic	4	#Tot.	232191	232191	111689	55383	12456
E—Cuban	271	%	23.5	23.5	11.3	5.6	1.2
F—Spanish	625	#Ilt.	8487	8487	7475	5934	2348
G— Flags	01110-01110	%	3.7	3.7	6.7	10.8	18.9

[SEAL]

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
Washington, D.C. 20233-0001

June 8, 1992

MEMORANDUM FOR THE RECORD

From: Robert Kominski
Chief, Education & Social Stratification Branch
Population Division

Subject: Detailed Research Tabulations on Voting Rights

This document acts as a guide for interpreting the package of detailed tabulations provided to Congress and the Justice Department in June 1992 for their research in determining the effect of various alternative criteria in the reauthorization of the Voting Rights Act.

There are a number of subtabulations in the package. These are: a summary state-level tabulation, an Indian Reservation tabulation, and detailed tabulations for each state. Each tab has several rows and columns shown for each identified "language minority" group. The columns are labelled as the "Voting Pop"—that is, the voting age citizen population, "English not only language"—those who reported they speak a language other than English; "English less than very well"—those who said they speak English well, not well, or not at all; "English less than well"—those who said they speak English not well or not at all; "English not spoken"—those who said they do not speak English at all. Each successive column is a population subset of previous columns.

The first row in a sequence of four shows the estimated number of persons who meet the stated criterion in the

column. The second row shows the proportion that a given column is of the total (first column). The third row shows the number of persons in the column who have completed fewer than 5 years of schooling (that is, are illiterate by definition of the Act). The fourth row shows what percentage the third row value is of the first.

Letters at the left-hand side of the tabulations indicate the "level" of the tabulation. "A" indicates a state or reservation; "B" is a political jurisdiction (generally counties); "C" are subdivisions within counties; "D" are the aggregate language minority groups—American Indian, Eskimo or Aleut, Asian American, and Hispanic; "E" are subgroups of the "D" level, for example, Indian tribes, Eskimos alone, or specific Asian groups like Japanese or Filipino; "F" are specific languages; and "G" is a summary set of ten 0-1 flags which tell the following about the tabulated group:

Flag 1: D-level group exceeded 5% of the total voting age citizens in the state

Flag 2: D-level group exceeded 5% of the total voting age citizens at the B or C level

Flag 3: D-level group exceeded 7,500 voting age citizens at the B or C level

Flag 4: D-level group exceeded 10,000 voting age citizens at the B or C level

Flag 5: D-level group exceeded 5% of the voting age citizens within an Indian reservation

Flags 6-10 repeat this information, but the determination is based on the number of people who speak English less than very well, as opposed to simply all members in the group. In short, the first 5 flags incorporate a qualifying notion similar to that before the passage of the Nickles amendment, while flags 6 through 10 reflect the Nickles amendment criteria.

In general, for the state-specific tabulations, we show a data block (four lines) anytime a group constitutes a minimum of 2% or 3000 of the voting age citizens. In addition, we show the largest non-English language, or any that qualify.

The first tabulation is a summary state-level tab only for purposes of determining those states that may qualify for statewide coverage under Section 203c. As can be seen in the printout, in most states no groups qualify, which is why only a total block for the entire state is displayed. In some states a group might qualify if pre-Nickles criteria were used, but in only two states—New Mexico and Texas—does a group (Hispanics) meet statewide qualification under the Nickles guidelines.

The next tabulation shows the results of the Indian Reservation determinations. This tab shows the results for the reservations themselves, that is, which reservations might possibly qualify, and for what group(s). Note that the determinations are not limited to Indian groups.

The remaining tabulations are the detailed state-specific runs, incorporating both the statewide determination rules, the 5% political jurisdiction rule, the numeric minimum cutoff rule (again going down to 3000 persons), and an Indian reservation qualification rule. In the case of the latter situation, if an area in a county was qualified because of the Indian reservation guideline, the numeric code for the reservation(s) in question is noted immediately below the "G" level line. In Apache County, Arizona, for example, note that the county qualifies for the Apache language because of reservation 1140. This code denotes the Fort Apache Reservation in Arizona, identifiable by the 1140 code on the "A" line in the reservation tabulation. Looking at the second data panel for that reservation, one can see that Apache speakers who speak English less than very well constitute 38.5% of all the voting age citizens on the reservation, and that this

group has an illiteracy rate of 2.6% Consequently, the reservation qualifies. Since Apache County Arizona contains a part of this reservation, it is qualified by the reservation (even though most of the American Indians who live in this county speak Navajo, as shown in the Apache County tabulation). Gila and Navajo Counties also contain part of this reservation and for this reason are also qualified by the reservation.

These tabulations were designed to address a wide variety of questions about various alternative constructions and implementations of the Voting Rights Act. If there are questions about any of these data, please contact me on (301)-763-1154.

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